

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN THE MATTER OF THE APPLICATION	§	
OF THE UNITED STATES OF AMERICA	§	
FOR AN ORDER AUTHORIZING THE	§	
USE OF A PEN REGISTER AND TRAP	§	MAGISTRATE NO. H-10-998M
AND TRACE DEVICE AND AUTHORIZING	§	MAGISTRATE NO. H-10-990M
RELEASE OF SUBSCRIBER AND OTHER	§	MAGISTRATE NO. H-10-981M
INFORMATION	§	

ORDER

The Government has recently submitted several requests for orders under 18 U.S.C. § 2703(d) compelling various service providers to disclose records pertaining to a customer's cell phone use, including historical cell site information. This court initially denied those requests in light of recent court decisions and technological developments, but invited the Government, if it disagreed with those rulings, to submit a brief to justify its position with appropriate legal and factual support. The court notes that such a brief was recently filed by the Government in opposition to the recent ruling by Judge Orenstein of the Eastern District of New York denying a similar request. *In re Application of U.S.*, No. 10-MJ-0550, 2010 WL 3463132 (E.D.N.Y. Aug. 27, 2010).

The court intends to issue a written opinion on this issue, and would benefit from having the considered arguments of the Government in support of its position. In that connection, the court hereby gives notice that it intends to take judicial notice of certain facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, including the following: (1) congressional testimony at recent hearings before House and Senate committees on ECPA reform; (2) published surveys and studies by telecommunications industry groups such as CTIA regarding cell sites and cell phone usage; (3) published reports and product specifications

concerning current microcell technology; and (4) published privacy policies of providers regarding call location information.

Any objection, or proposed addition, to these categories of judicially noticed facts should be included with the Government's brief, which will be due on or before Friday, October 22, 2010. The brief may not be filed under seal, although factual submissions may be redacted as appropriate to protect the integrity of the underlying criminal investigations.

Signed at Houston, Texas on October 14, 2010.


Stephen Wm Smith
Stephen Wm Smith
United States Magistrate Judge